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Chief of Records
Attention: Request for Comments
Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Ladies and Gentlemen:

As one who has represented clients on QFAC matters for many years, I write to comment on the proposed rules concerning the disclosure of certain civil penalties information. 67 Fed. Reg. 41658 (June 19, 2002). These comments focus on (i) the distinctions to be drawn, in any disclosure, between penalties and settlements; and (ii) the effective date of the disclosure rule.

If OFAC decides to implement a policy of disclosing information about civil penalties, it is critical that the disclosures clearly distinguish between the imposition of civil penalties for violations and the settlement of allegations of violations. In my experience, the greater likelihood of privacy with respect to settlements has been one of the primary incentives for entities to engage in settlement discussions with OFAC. If the past practice of generally not publicizing settlements is supplanted by a policy of periodic disclosure of all settlements, then this incentive for settlement will be lost. Only if OFAC carefully distinguishes in its disclosures between settlements, on the one hand, and civil penalty payments, on the other, will entities subject to civil penalty allegations perceive any benefit, from a publicity standpoint, in reaching a settlement. Since the resources that OFAC would have to devote to administrative proceedings leading to civil penalties would be substantial, it is in OFAC's interest to maintain an incentive for alleged violators to settle.

Accordingly, if periodic disclosures are to be made, they should set settlements apart from civil penalties and distinguish the two by prominent headings in the published disclosure. Furthermore, the disclosure should state with respect to each settlement, consistently with OFAC regulations and stated policy, that (a) the amount paid in settlement was a voluntary payment and not a penalty; (b) the settling entity did not admit the allegations of violation; and (c) OFAC withdrew any and all claims of violation and made no determination whether any violation had

occurred. Furthermore, any Settlements based on voluntary self-disclosures should be identified as such. These statement will help to inform the public of the terms and conditions under which settlements occur and will distinguish such terms and conditions from those applicable to ordinary civil penalties.

If OFAC decides to implement the proposed disclosure rule, the implementation should be prospective only. Those parties that chose to reach a settlement with **OFAC** during the period in which it was not the general practice to publicize settlements should not now be subject to retroactive disclosure. To make disclosures of such settlements would unfairly alter the reasonable expectations of the settling parties, which might well have insisted on **an** administrative proceeding at which they could have been exonerated, rather than pursue settlement and have the settlement publicized. Therefore, if the proposed rule were adopted in final form **as** of December 31,2002, for example, only those settlements reached on or after January 1,2003 should be subject to the new disclosure policy.

To the extent that a policy of disclosure helps inform **U.S.** persons of OFAC's enforcement practices, it **can** enhance compliance with **U.S.** sanctions laws. But it can do so only if it treats fairly thuse entities that decided to reach settlements in reliance on different disclosure practices and if it underscores the important distinctions between settlements and civil penalties.

Sincerely yours,

Simeon M. Kriesberg

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